

Supreme Court of the United States

OCTOBER TERM, 1963

No. 235

UNITED STATES, APPELLANT

vs.

WILLIAM C. WELDEN

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS

62-286-C

THE UNITED STATES

v.

H. P. HOOD & SONS, INC., UNITED FARMERS OF NEW
-ENGLAND, INC., NATIONAL DAIRY PRODUCTS CORPORA-
TION, HARVEY P. HOOD, [WILLIAM C. WELDEN, JS6
[4-68] STANLEY W. BEAL, ALBERT C. FISHER, and
LEO G. MAHER

VIOLATION: SHERMAN ACT—ANTI-TRUST
2 counts

Date
1962

DOCKET ENTRIES

- Sept. 6 Indictment returned to the Court by the Grand Jury, Indictment filed.
- 20 Appearance of Sumner H. Babcock, as counsel for defts. National Dairy Products Corp., Albert C. Fisher and Leo G. Maher, filed.
- 20 Motion of defendant ALBERT C. FISHER for leave to appear for arraignment and to plead through counsel, assented to and filed.
- 25 CAFFREY, D. J. All Defendants appeared for arraignment and pleaded Not Guilty to all counts, all represented by counsel. Court ordered all held in \$1,000. was and the bonds previously furnished in Cr. 62-147 to suffice for this action. All Defendant Corporations, pleaded by counsel (as in Cr. 62-147) and pleaded Not Guilty to all counts.
- 25 The court informed all counsel that all motions ruled upon in Cr. 62-147 are in effect in this action. The following stipulations were filed in open Court before the Court's ruling. Bonds filed by A. C. Fisher & Leo G. Maher in Cr. 62-147 be applicable to this action.

Date
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[fol. 2]

Sept. 25 CAFFREY, D.J. Stipulated that all motions filed by Dft. Wm. C. Welden in Cr. 62-147-C be applicable to this action., Stipulated that all motions filed by the Dft. H.P. Hood & Sons, Inc. in Cr. 62-147-C be applicable to this action., Stipulated that all motions filed by Dft. Harvey P. Hood in Cr. 62-147-C be applicable to this action., Stipulated that all motions filed by Dft. Corp. National Dairy Products & Dfts. Albert C. Fisher & Leo G. Maher in Cr. 62-147-C be applicable to this action. All stipulations filed. Consent and authorization of Dft. Albert C. Fisher pursuant to Rule 43, to authorize Sumner H. Babcock, Esq. to plead in his behalf., filed. Authorization of National Dairy Products Corp. hereby authorizing Sumner H. Babcock, Esq. to plea for the Dft. corp. filed. Appearance of Claude B. Cross & Philip M. Cronin, 73 Tremont St. Boston, for Dfts. United Farmers of New England, Inc. & Dft. Stanley W. Beale, filed. Appearance of Robert W. Meserve & John R. Hally, 75 Federal St. Boston, for Dft. Harvey P. Hood, filed. Appearance of Edward B. Hanify, 50 Federal St. Boston, for dft. H. P. Hood & Sons, Inc., filed. A Certificate from Executive Committee of the Board of Directors of H. P. Hood & Sons, Inc. showing the committee unanimously voted: Geo. J. Devlin, Ed. B. Hanif Warren F. Farr, and Ropes & Gray be authorized to appear and plead on behalf of Dft. corp., filed. Power of Attorney by United Farmers of New England, Inc. authorizing Claude B. Cross & Philip M. Cronin its attorneys to represent and pleade on its behalf, filed.

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Sept. 25. Stipulated that all motions filed by Deft. Stanley W. Beale & United Farmers of New England, Inc., in Cr. 62-147-C be applicable to this action, filed.

Appearance of George Lewald, 50 Federal St. Boston, for dft. Wm. C. Welden, filed.

28 Notification by Sumner H. Babcock, Esq. counsel for Dfts. Albert C. Fisher, Leo G. Maher & National Dairy Products, Inc. that Joseph Ford, Esq. (now an Associate Justice of the Superior Ct.) has withdrawn his appearance and Robert Haydock, Jr. of Bingham, Dana & Gould, 1 Federal St. Boston, Mass. appearance. filed

Nov. 1 CAFFREY, D.J. Letter to Mr. Meserve as spokesman for all defendants setting up a schedule as requested by Mr. Meserve in his letter of June 29, 1962. 1. Memoranda in support of the various motions are to be filed by counsel for Defendants on or before 5 p.m. Friday, Nov. 23, 1962; 2. Memoranda in opposition to the allowance of the various motions or memoranda conceding any portion of the motions for bill of particulars, as the case may be are to be filed by counsel for the Government on or before 5 p.m. Wednesday, Dec. 5, 1962. 3. Oral argument on all motions be held at 10 a. m. Monday, Dec. 10, 1962. 4. Reply memoranda by either counsel or Government counsel, if any, in the light of what transpires at oral argument, may be filed not later than 5 p.m. Friday, Dec. 14, 1962. 5. The application to dismiss Cr. No. 62-147 is to be filed with the Government's memoranda due at 5 p.m. Wednesday, Dec. 5, 1962. copies to all counsel mailed.

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- Nov. 23 Defendants' memorandum in support of motions for particulars, filed. c/s
- 23 Defendants' memorandum in support of motion to strike certain allegations from the Indictment, filed. c/s
- 23 Defendants' memorandum in support of motion to strike certain allegations from the Indictment, filed. c/s
- 23 Joint memorandum of defendants in support of Motion to dismiss, (Sections I-III), filed.
- [fol. 3]
- 23 Defendants' memorandum in support of Motions for Particulars, filed. c/s
- 26 Joint memorandum of defts in support of motion to dismiss (Sections IV-VII), filed.
- 26 Defts' Exhibits to joint memorandum of defts in support of motion to dismiss, filed.
- 26 Defts' Exhibit E, filed.
- Dec. 5 Government's Memorandum in opposition to Defendants' Motion to strike, filed c/s
- 5 Government's Memorandum in opposition to defendants' Motions for Bills of Particulars filed, c/s
- 5 Government's Memorandum in opposition to defendants' Motions to Dismiss filed c/s
- 5 Affidavit by William J. Elkins, Esq. attorney for Antitrust Division of the U.S. Department of Justice re: Defendants Motion to Dismiss, filed
- 5 Affidavit by John A. Canavan, Clerk of the U.S. District Court re: selection of jurors, filed.

Date
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- Dec. 5 Conformed copy of Order For Grand Jury, Sept. 14, 1961 signed by Francis J.W. Ford, Judge of the U.S. District Court and Austin W. Jones, Jr. Deputy Clerk of the U.S. District Court filed.
- 10 CAFFREY, D.J. Hearing on Defendants Motions for Particulars, to strike, and to dismiss. After argument, the Government gave to defendants paperes Re: Motion for Particulars. The Court informed the defendants they had until 5 p.m. Dec. 17, 1962 to notify the court as to their acceptance. The Court informed all counsel the other motions would remain pending subject to the case before the Court of Appeals. The Court informed counsel Cr. 62-147 (old indictment) was dismissed on Dec. 5, 1962. All reply briefs on Motion for Particulars must be filed by 5 p.m. Dec. 20, 1962.
- 20 Reply memorandum of deft. Welden in support of Motion to dismiss, filed (with duplicate copy) . . . Sections VI-VII.
- 20 Joint reply of defendants in support of motion to dismiss, filed, (with duplicate copy).

1963

- Feb. 7 Government's Motion to Impound Documents, together with Affidavit of Wm. J. Elkins in support of Order Impounding Documents, filed. c/s
- 14 Request of George Lewald by letter dated Feb. 13, 1963 as follows "Please be advised that I wish to be heard in opposition to the Government's Motion to Impound Documents. Will you kindly notify me when this matter is set for hearing."
- Mar. 1 Government's memorandum in support of motion to impound documents, filed with 2 copies.

Date
1963

[fol. 4]

Mar. 4 CAFFREY, D.J. Hearing on Gov. Motion to Impound Documents, All counsel in attendance, and no one objecting, MOTION ALLOWED.

6 CAFFREY, D.J. ORDER FOR IMPOUNDING DOCUMENTS entered . . . IT IS NOW THEREFORE ORDERED that all documents and copies of documents, heretofore produced in response to the aforesaid subpoenas *duces tecum* be and the same are hereby impounded in the custody of the Clerk of the U.S. District Court, District of Massachusetts, and that without further order of this Court, counsel for the United States may remove any or all of said documents to their offices at the U.S. Department of Justice, New York 4, N.Y. for their continued use in preparation of said case for trial, and for use in connection with any other judicial proceedings arising out of said investigation.

IT IS FURTHER ORDERED that counsel for the United States may, with approval of counsel for defendants and without any further order of this Court, return to those who produced them any of such documents which will not be required in any such proceeding.

IT IS FURTHER ORDERED that any material concerning which the defendant or any of them are given the right to inspect, shall be brought to Boston, Mass., for that purpose. Wm. Elkins, Esq., notifying other side.

Date
1963

- Mar. 27 CAFFREY, D.J. MEMORANDUM AND ORDER entered . . . All motions for bills of particulars are denied; all motions to strike are denied; the motions to dismiss filed on behalf of the corporate defendants and the defts. Hood, Beal, Fisher and Maher are denied. The motion to dismiss the indictment as to defendant Welden is allowed. The indictment is dismissed as to deft. Wm. C. Welden. Cpys to West Pub. Messrs Elkins, Babcock, Hanify, Harrington, Claude Cross and Philip Cronin; Robert Meserve and John Hally, Geo. J. Devlin and Geo. H. Lewald.
- 27 CAFFREY, D.J. JUDGMENT entered (re: Wm. C. Welden) In accordance with Memorandum and Order of the Court handed down this date, it is ORDERED:
- Judgment of acquittal for defendant William C. Welden. Cpys to Messrs Elkins Babcock, Hanify, Harrington, Claude Cross and Philip Cronin; Robert Meserve and John Hally, Geo. J. Devlin and Geo. H. Lewald.
- Apr 26 Stenographic transcript of proceedings on April 16, 1963, filed.
- 26 Notice of Appeal to the Supreme Court filed by gov't. with c/s/attached
- May 15 Appellee's cross-designation of record to be certified on appeal filed. c/s

[fol. 5]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

62-147-C

THE UNITED STATES

v.

H. P. HOOD & SONS, INC., UNITED FARMERS OF NEW
ENGLAND, INC., NATIONAL DAIRY PRODUCTS CORPORATION,
HARVEY P. HOOD, WILLIAM C. WELDEN, STAN-
LEY W. BEAL, ALBERT C. FISHER, and LEO G. MAHER

VIOLATION: ANTI-TRUST SHERMAN ACT 15 USC § 1
T 18 Sec. 371 US Code
2 Counts

Date
1962

DOCKET ENTRIES

- Apr. 24 Indictment returned to the Court by the Grand Jury
- 26 CAFFREY, D. J. Hearing on Oral motion of Joseph Ford, Esq., for Dfts' Fisher, Maher & Nat. Dairy Products Corp.- Wm. Elkins Esq., and Chas Donelan, Esq., for Gov. and opposing. Memo of Defendants Fisher and Maher, filed:
- (1) Motion to withstay fingerprints and photos by Marshal following arraignment and
 - (2) Motion to waive appearance of Deft. Fisher at arraignment—After argument—*Both Motions denied.*

Date
1962

- Apr. 26 Court informed counsel—(there will be an order issued to U.S. Marshal to prohibit photographers from 12th floor P.O. Bldg.—on Monday Apr. 30, 1962—at time of arraignment.
- 27 Appearance of Robert W. Meserve and John R. Hally of Nutter McClennan & Fish, 75 Federal St., Boston, Mass., as counsel for defendant Harvey P. Hood, filed.
- 27 Appearance of George J. Devlin of 500 Rutherford Ave., Boston, Mass as counsel for H.P. Hood & Son Inc.,

[fol. 6]

- 27 Appearance of John M. Harrington of 50 Federal St., Boston, Mass., as counsel for William C. Welden, filed.
- 27 Appearance of George Lewald of 50 Federal St., Boston, Mass., as counsel for William C. Welden, filed.
- 27 Appearance of Joseph Ford, Bingham, Dana & Gould of 1 Federal St., Boston, Mass., as counsel for National Dairy Corporation, Leo Maher and Albert C. Fisher, filed.
- 27 Appearance of Edward B. Hanify of 50 Federal St., Boston, Mass., as counsel for H.P. Hood & Sons, Inc., filed.
- 27 Appearance of Claude B. Cross and Philip M. Cronin of 73 Tremont St., Boston, Mass., as counsel for United Farmers of New England Inc., and Stanley W. Beal, filed.

Date
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- Apr. 30 CAFFREY, D.J. Arraignment — (Violation Anti Trust Laws)
H.P. Hood Inc. (rep. by Edward B. Hanify, Esq.,) P/A filed—Plea of N/G
United Farmers of New England (rep by Claude B. Cross Esq.,) P/A filed—Plea N/G
National Dairy Products Inc. (rep. by Joseph Ford, Esq., P/A filed—Plea N/G
Harvey P. Hood (with counsel) Plea of Not Guilty—Bail \$1,000.00 w/o/s
William C. Weldon (with counsel) Plea of Not Guilty—Bail \$1,000.00 w/o/s
Stanley W. Beal (with counsel) Plea of Not Guilty—Bail \$1,000.00 w/o/s
Albert C. Fisher (with counsel) Plea of Not Guilty—Bail \$1,000.00 w/o/s
Leo G. Maher (with counsel) Plea of Not Guilty—Bail \$1,000.00 w/o/s
All Defendants—60 days for special pleas.
- 30 Appearance bond for Harvey P. Hood, filed. Request for copy by Robert Meserve, Esq.
- 30 Appearance bond for Wm. C. Welden, filed. Request for copy by John M. Harrington, Jr., Esq.
- 30 Appearance bond for Stanley W. Beal, filed.
- 30 Appearance bond for Albert C. Fisher, filed.
- 30 Appearance bond for Leo G. Maher, filed.
- May 3 Copies of Appearance Bonds mailed to Messrs Harrington and Meserve.
- 4 Motion of deft. Harvey P. Hood for modification of appearance bond, filed, and assented to by William J. Elkins, Atty, AntiTrust Div. Dept. of Justice on May 4, 1962.

Date
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- May 4 Motion of defendant William C. Welden for modification of appearance bond, filed, and *assented* by William J. Elkins, Atty, AntiTrust Div. Dept. of Justice on May 4, 1962
- 4 CAFFREY, D.J. Motion of deft. Harvey P. Hood for modification of appearance bond, *allowed*, Atty Robert Meserve notified by phone.
- 4 CAFFREY, D.J. Motion of deft. William C. Welden for modification of appearance bond, allowed Atty John M. Harrington, Jr., notified by phone.
- 10 Stenographic record of proceedings on Apr. 30, 1962, filed.
- Jun 29 Motion of defendant National Dairy Products Corporation to dismiss Indictment, filed. c/s
- 29 Motion of the deft. Leo G. Maher to dismiss Indictment, filed. c/s
- 29 Motion of defendant Albert C. Fisher to dismiss Indictment filed. c/s
- 29 Motion to dismiss Indictment of United Farmers of New England, Inc., filed. c/s
- 29 Motion to dismiss Indictment of deft. Stanley W. Beal, filed. c/s
- 29 Motion of deft. Stanley W. Beal for particulars of certain allegations in the deft., filed. c/s
- [fol. 7]
- 29 Motion of deft. United Farmers of New England, Inc. to strike certain allegations of Indictment, filed. c/s
- 29 Motion of the deft. Harvey P. Hood for a bill of particulars, filed. c/s
- 29 Motion of the defendant Harvey P. Hood to dismiss the Indictment, filed. c/s

Date
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- Jun 29 Motion of the deft. Harvey P. Hood to strike certain allegations of the Indictment, filed. c/s
- 29 Motion of defts. National Dairy Products Corporation, Albert C. Fisher and Leo G. Maher for particulars of certain allegations of Indictment, filed. c/s
- 29 Motion of defts. National Dairy Products Corp., Leo G. Maher and Albert C. Fisher to strike certain allegations of Indictment, filed. c/s
- 29 Motion of deft. Stanley W. Beal to strike certain allegations of Indictment filed, c/s
- 29 Motion of defendant United Farmers of New England, Inc., for particulars, filed. c/s
- Jul 2 Motion of the defendant William C. Welden to dismiss the Indictment, filed. c/s
- 2 Motion of the deft. William C. Welden to strike certain allegations of the Indictment filed. c/s
- 2 Motion of the defendant William C. Welden for a bill of particulars, filed. c/s
- 2 Motion of the defendant H.P. Hood & Sons, Inc., for a bill of particulars, filed c/s
- 2 Motion of the defendant H.P. Hood & Sons, Inc., to dismiss the Indictment filed. c/s
- 2 Motion of the defendant H.P. Hood & Sons, Inc., to strike certain allegations of the Indictment filed. c/s
- 11 Motion of Albert C. Fisher for leave to withdraw motion to dismiss Indictment filed June 29, 1962, and to file, in lieu thereof, motion to dismiss Count One of the Indictment, filed. c/s

Date
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- Jul 11 Motion of the defendant Albert C. Fisher to dismiss Count One of the Indictment, filed. c/s
- Sept. 5 Motion of Defendant Harvey P. Hood for Modification of appearance Bond, Assented to Allowed
- Nov. 1 CAFFREY, D.J. Letter to Mr. Meserve as spokesman for all defendants setting up a schedule as requested by Mr. Meserve in his letter of June 29, 1962: 1. Memoranda in support of the various Motions are to be filed by counsel for Defendants on or before 5 p.m. Friday, Nov. 23, 1962; 2. Memoranda in opposition to the allowance of the various motions or memoranda conceding any portion of the motions for bill of particulars, as the case may be, are to be filed by counsel for the Government on or before 5 p.m. Wed. Dec. 5, 1962. 3. Oral arguments on all motions to be held at 10 a.m. Mon. Dec. 10, 1962. 4. Reply memoranda by either counsel or Government counsel, if any, in the light of what transpires at oral arguments, may be filed not later than 5 p.m. Fri. Dec. 14, 1962. 5. The application to dismiss Cr. No. 62-147 is to be filed with the Government's Memoranda due at 5 p.m. Wed. Dec. 5, 1962. copies of this letter mailed to all counsel.

[fol. 8]

- Dec. 5 Dismissal of Indictment, filed
- 5 CAFFREY, D.J. Leave to file Dismissal of Indictment GRANTED.

[fol. 9]

[Clerk's Certificate to foregoing papers omitted in printing.]

[fol. 10]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

No. 62-286-C CRIMINAL

UNITED STATES OF AMERICA

v.

H. P. HOOD & SONS, INC., UNITED FARMERS OF NEW
ENGLAND, INC., NATIONAL DAIRY PRODUCTS CORPORA-
TION, HARVEY P. HOOD, WILLIAM C. WELDEN, STAN-
LEY W. BEAL, ALBERT C. FISHER, and LEO G. MAHER,
DEFENDANTS

INDICTMENT—filed September 6, 1962

The Grand Jury charges:

COUNT ONE

I. *The Defendants*

1. H. P. Hood & Sons, Inc. (hereinafter referred to as "Hood"), a corporation organized and existing under the laws of the Commonwealth of Massachusetts with offices in Boston, Massachusetts, is hereby indicted and made a defendant herein. Hood is engaged in business as a milk handler in the states of Maine, Vermont, New Hampshire, Connecticut, Rhode Island and the Commonwealth of Massachusetts.

2. United Farmers of New England, Inc. (hereinafter referred to as "United Farmers"), a cooperative corporation organized and existing under the laws of the State of Vermont with offices in Boston, Massachusetts, is hereby indicted and made a defendant herein. The membership of United Farmers is composed of approximately 2,300 member dairy farmers located in Maine, New Hampshire, Vermont, and New York and is engaged in business as a milk handler in the aforementioned states and in the Commonwealth of Massachusetts.

3. National Dairy Products Corporation (hereinafter referred to as "National Dairy"), a corporation organized and existing under the laws of the State of Delaware with offices in New York, New York, is hereby indicted and [fol. 11] made a defendant herein. National Dairy was, during the period of time covered by this indictment, engaged in business as a milk handler in the Greater Boston area under the name Deerfoot Farms, which was operated at times by either National Dairy's General Ice Cream Division or National Dairy's Northeastern Division of its Sealtest Division. On December 31, 1959 the business of Deerfoot Farms was sold by defendant National Dairy to defendant United Farmers.

4. The following named individuals are hereby indicted and made defendants herein. Each of the defendants named in this paragraph personally and actively participated as a conspirator in the offense charged and has performed acts in furtherance thereof. Within the period of time covered by this indictment, and within five years preceding the return of this indictment, each was associated with one of the following corporations in the capacity indicated:

a. Harvey P. Hood. He was the President of H. P. Hood & Sons, Inc. until January, 1962 when he became Chairman of its Board of Directors. He resides in Brookline, Massachusetts.

b. William C. Welden. He is the Economist for H. P. Hood & Sons, Inc., and resides in Winchester, Massachusetts.

c. Stanley W. Beal. He is the General Manager of United Farmers of New England, Inc., and resides in Wellesley Hills, Massachusetts.

d. Albert C. Fisher. He was, during the period of time covered by this indictment, Vice President of the General Ice Cream Division of National Dairy Products Corporation, and resides in Scarsdale, New York.

e. Leo. G. Maher. He was, during the period of time covered by this indictment, the General Manager of National Dairy's milk business in the Greater Boston area, which was operated under the name Deerfoot Farms.

[fol. 12] He is currently the Manager of National Dairy's Sealtest Ice Cream Plant in Cambridge, Massachusetts and resides in Needham, Massachusetts.

II. *Co-conspirators*

5. Various corporations and individuals not made defendants herein participated as co-conspirators with the defendants in the offense charged herein and performed acts and made statements in furtherance of said offense. Said co-conspirators, some of them being unknown to the grand jurors, included among them the Whiting Milk Company, Inc. (hereinafter referred to as Whiting), a corporation organized and existing under the laws of the Commonwealth of Massachusetts with offices in Boston, Massachusetts. Whiting is engaged in business as a milk handler in the states of Maine, Vermont, New Hampshire, Connecticut, Rhode Island and the Commonwealth of Massachusetts.

III. *Definitions*

6. Whenever used in this indictment, the terms:

- a. "Raw milk" means unprocessed cow's milk;
- b. "Milk" means processed raw milk sold by milk handlers for human consumption as whole milk;
- c. "Person" means any individual, partnership, corporation or other legal entity;
- d. "Producer" means a person possessing cows and engaged in the business of selling raw milk produced by such cows to milk handlers;
- e. "Milk handler" means a person engaged in the processing of raw milk purchased from producers and bottling, selling and distributing milk to wholesale, retail and institutional customers;
- f. "Greater Boston area" means Boston, Massachusetts and the surrounding area having a radius of approximately 25 miles from Boston, Massachusetts.

IV. *Nature of Trade and Commerce Involved*

7. The Greater Boston area is an important market for the purchase, processing, sale and distribution of

milk. Approximately 350,000,000 quarts of milk having a value in excess of \$70,000,000 are sold there annually. Of this total about 80% is purchased as raw milk from producers located outside the Commonwealth of Massachusetts, of which the State of Vermont alone accounts for over 30%. During the period of time covered by this indictment, the corporate defendants and Whiting operated major processing plants in the Greater Boston area from which they supplied more than 70% of the milk sold in that market.

8. Milk is a perishable commodity and can only be stored for a short period of time prior to its sale and consumption. Accordingly, it must reach the consumer within a short time after it is taken from the cow. Milk obtained by producers on dairy farms located in the six New England States is hauled every day to country stations maintained by milk handlers where the raw milk is assembled and then transported in trucks and rail tank cars to processing plants operated by milk handlers. A substantial amount of this raw milk is transported to processing plants owned by the corporate defendants and Whiting in the Greater Boston area. When the raw milk arrives at the processing plants it is pumped into large vats for pasteurization. It is then packaged and distributed to wholesale, retail and institutional consumers. Thus, from day to day there is a regular, continuous and substantial flow of milk in interstate commerce from producers in the various states of New England to consumers located in the Greater Boston area.

9. Hood maintains approximately 30 country stations in the six New England states. Every day raw milk is [fol. 14] transported from the country stations to one of Hood's eight processing plants which are located in the states of Maine, Connecticut, Vermont, New Hampshire, Rhode Island and the Commonwealth of Massachusetts. Hood's largest processing plant is located in Boston, Massachusetts, and the milk processed at this plant is distributed by Hood to consumers in the Greater Boston area. This plant handles approximately 400,000 quarts of milk daily, over 80% of which comes from producers located in Maine, Vermont and New York.

10. United Farmers receives raw milk from its approximately 2,300 member dairy farmers located in the states of Maine, New Hampshire, Vermont and New York, and processes it at its plant in Boston, Massachusetts. The milk processed at this plant is distributed by United Farmers to consumers in the Greater Boston area and other parts of Eastern Massachusetts.

11. Until December 31, 1959 National Dairy processed raw milk at its plant in Newton, Massachusetts and distributed milk from there to consumers in the Greater Boston area and other parts of Eastern Massachusetts. More than 80% of the milk processed in Newton, Massachusetts was assembled at National Dairy's country stations in Cambridge, New York and Middlebury, Vermont.

12. Whiting obtains its entire supply of raw milk from country stations and farm-cooperatives located in the State of Vermont. Whiting maintains three processing plants which are located in Massachusetts and Rhode Island, to which the raw milk from Vermont is shipped. Whiting's largest processing plant is located in Boston, Massachusetts, and most of the milk processed at this plant is distributed by Whiting to consumers in the Greater Boston area and other parts of Eastern Massachusetts.

13. During the period covered by this indictment the corporate defendants—Hood, United Farmers and National Dairy—and Whiting sold and delivered a substantial amount of milk to, among others, retail stores and vending machine operators located in the Greater Boston area. In order to supply the requirements for milk so delivered the aforementioned corporations regularly purchased raw milk from producers having farms located outside the Commonwealth of Massachusetts which they thereafter processed and delivered as milk within the Greater Boston area.

14. During the period covered by this indictment the corporate defendants—Hood, United Farmers and National Dairy—and Whiting sold and delivered a substantial amount of milk to federal, state and municipal institutions located in the Greater Boston area, included among which were schools, hospitals and military instal-

lations. In addition, the corporate defendants and Whiting sold and delivered milk to military installations which were located outside the Greater Boston area and in the states of Maine, New Hampshire and Massachusetts. Sales to all such institutions by the corporate defendants and Whiting were approximately \$3,000,000 annually. To obtain their milk requirements the aforementioned institutions issued invitations to bid to milk handlers which would in turn submit their bids to the respective institutions. Contracts were awarded to the milk handlers which submitted the lowest bid in response to such invitations. In order to supply the requirements for milk under such contracts and to provide for other anticipated demands, the aforementioned corporations regularly purchased raw milk from producers having farms located outside the Commonwealth of Massachusetts which they thereafter processed and delivered as milk to the aforementioned federal, state and municipal institutions.

V. Offense Charged

15. Beginning in about March 1956 and continuing [fol. 16] thereafter to sometime in 1959, the exact dates being to the grand jury unknown, the defendants and co-conspirators entered into and have engaged in an unlawful combination and conspiracy in restraint of the hereinbefore described interstate trade and commerce in milk in violation of Section 1 of the Act of Congress of July 2, 1890 as amended (15 U.S.C. § 1), commonly known as the Sherman Act.

16. The aforesaid combination and conspiracy consisted of a continuing agreement and concert of action among the defendants and co-conspirators, the substantial terms of which were that they agreed:

a. To raise, fix, stabilize and maintain prices, terms and conditions for the sale of milk in the Greater Boston area;

b. To allocate among themselves the business of selling milk to designated federal, state and municipal institutions located in Maine, New Hampshire and Massachusetts;

c. To either refrain from submitting bids or price quotations to the said federal, state and municipal institutions allocated to any other corporate defendant or Whiting or to submit high complementary bids or price quotations not intended to attract the award;

d. To eliminate the solicitation of each other's customers in various geographic areas within the Greater Boston area.

17. In formulating and effectuating the aforesaid unlawful combination and conspiracy the defendants and co-conspirators entered into various agreements, understandings and arrangements among themselves and have done various things and have performed various acts including, among others, the following:

a. During the period of time covered by this indictment they met at various places including, among others, the Harvard Club, the University Club and the Union Club in Boston, Massachusetts;

[fol. 17] b. At such meetings they allocated the bid business of the aforementioned institutions among themselves and, from time to time, reaffirmed such allocations;

c. The corporate defendant or corporate co-conspirator allocated a particular bid contract would communicate to the others, usually at such meetings, the amount that it was to bid, so that the others, if they submitted bids, would submit bids in an amount not calculated to attract the award;

d. At such meetings they divided certain of such bid business by rotating it among themselves, and on at least one occasion, decided the order of such rotation by tossing coins.

VI. Effects

18. The combination and conspiracy alleged in this Count of the Indictment had, among others, the following effects:

a. Wholesale and retail prices on milk sold in the Greater Boston area were raised, fixed, maintained and stabilized at high and artificial levels.

b. Competition among the corporate defendants and Whiting in the sale and distribution of milk to designated federal, state and municipal institutions in Maine, New Hampshire and Massachusetts was suppressed and eliminated;

c. Designated federal, state and municipal institutions in Maine, New Hampshire and Massachusetts were fraudulently denied the right to receive competitive sealed bids in the purchase of their milk requirements as required by law, and have been forced to pay high and artificially-fixed prices for milk;

d. Competition among the corporate defendants and Whiting in the sale and distribution of milk in the Greater Boston area was restrained, suppressed and eliminated.

[fol. 18]

VII. *Jurisdiction and Venue*

19. The offense alleged in this Count of the Indictment was committed in part within the District of Massachusetts within five years preceding the return of this Indictment.

COUNT TWO

VIII. *The Defendants*

20. The allegations contained in paragraphs 1 through 3 of this Indictment are here realleged with the same force and effect as though said paragraphs were here set forth in full.

21. The following named individuals are hereby indicted and made defendants herein:

- a. Harvey P. Hood. He was President of H. P. Hood & Sons, Inc. until January 1962 when he became Chairman of its Board of Directors. He resides in Brookline, Massachusetts.
- b. William C. Welden. He is the Economist for H. P. Hood & Sons, Inc. and resides in Winchester, Massachusetts.

- c. Leo G. Maher. He was formerly the General Manager of National Dairy Products Corporation's milk business in the Greater Boston area, which was operated under the name Deerfoot Farms. He is currently the Manager of National Dairy Products Corporation's Sealtest Ice Cream plant in Cambridge, Massachusetts and resides in Needham, Massachusetts.

IX. *Co-conspirators and Definitions*

22. The allegations contained in paragraphs 5 and 6 of this Indictment are here realleged with the same force and effect as though said paragraphs were here set forth in full.

[fol. 19] X. *Background of Offense*

23. During the period covered by Count Two of this Indictment, the United States of America through its various departments and agencies purchased a substantial quantity of milk for the requirements of certain of its installations located in the Commonwealth of Massachusetts and the states of Maine and New Hampshire. In an effort to obtain this milk at competitive prices the United States periodically invited suppliers, including the corporate defendants and Whiting, to submit sealed bids for contracts to supply the milk requirements of such installations. These contracts generally were for a fixed period of either three or six months and were awarded to the lowest responsible bidder. In response to these invitations to bid each of the defendant corporations and Whiting has regularly submitted bids to said installations and on numerous occasions contracts to supply the milk requirements of these installations were awarded to said corporations on the basis of the bids so submitted.

XI. *Offense Charged*

24. Beginning at least as early as November 1956 and continuing thereafter to sometime in 1959, the exact dates being to the grand jury unknown, defendants and co-conspirators knowingly conspired to defraud the United

States in violation of Section 371 of Title 18 of the United States Code.

25. The aforesaid conspiracy consisted, among other things, of a continuing agreement, understanding and concert of action to defraud and injure the United States by depriving the United States of America of the right and duty to let contracts for the sale of milk to federal installations located in the Commonwealth of Massachusetts and the states of Maine and New Hampshire during the said period by means of competitive bidding to the lowest responsible bidder, and by obtaining and aiding to obtain the payment of false and fraudulent claims under [fol. 20] periodic contracts awarded to the corporate defendants and Whiting as a result of such collusive bidding.

26. It was part of the said conspiracy that, while keeping up the appearance of competition and conveying to federal awarding authorities the idea and belief that the corporate defendants and Whiting were competitive bidders, the defendants and co-conspirators agreed to avoid and prevent competition and deceive the awarding authorities by secretly allocating among the corporate defendants and Whiting the periodic contracts to supply milk to designated installations operated by agencies of the United States at prices higher than those which would have prevailed had there been no such allocation.

27. It was a further part of the said conspiracy that, while keeping up an appearance of competition and conveying to federal awarding authorities the idea and belief that the corporate defendants and Whiting were competitive bidders, a representative of the corporation selected to submit the successful bid for a periodic contract would secretly communicate the amount of such bid to the other corporate defendants and Whiting prior to the date on which bids were to be submitted, and that such others would refrain from bidding or would submit high, non-competitive, collusive, complementary bids not intended or calculated to attract the award, all to the mutual profit of the corporate defendants and Whiting, the injury of the United States, and the impairment of governmental functions.

XII. Overt Acts

28. In furtherance of the said conspiracy and to effect the object thereof, certain of the defendants and co-conspirators did commit, among others, the following overt acts in the District of Massachusetts:

a. In or about November 1956, the defendants William C. Welden and Leo G. Maher, met with co-conspirators at the Harvard Club, in Boston, Massachusetts.

b. On or about September 11, 1957, at Boston, Massachusetts, defendant United Farmers formulated and submitted to the Boston Naval Shipyard, Navy Department, a bid for a contract to supply milk.

c. On or about December 16, 1957, at Boston, Massachusetts, co-conspirator Whiting formulated and submitted to the Boston Naval Shipyard, Navy Department, a bid for a contract to supply milk.

d. On or about June 10, 1958, at Boston Massachusetts, defendant Hood formulated and submitted to the Boston Naval Shipyard, Navy Department, a bid for a contract to supply milk.

e. On or about September 6, 1957, at Boston, Massachusetts, defendant Hood formulated and submitted to the Portsmouth Naval Shipyard, Navy Department, a bid for a contract to supply milk.

f. On or about September 7, 1958, at Boston, Massachusetts, co-conspirator Whiting formulated and submitted to the Portsmouth Naval Shipyard, Navy Department, a bid for a contract to supply milk.

29. The following table reflects consecutive periods of particular bid contracts to supply milk to the Portsmouth Naval Shipyard, Navy Department, the dates of the pertinent bid openings and the names of the successful bidders on such contracts during the period of time covered by this Indictment. By the terms of the said conspiracy the periodic contracts for this installation were to be alternated between Whiting and defendant Hood; and, pursuant to said conspiracy, these contracts were alternately allocated to Whiting and defendant Hood by the defendants and the co-conspirators:

<u>Contract Period</u>	<u>Date of Opening</u>	<u>Successful Bidder</u>
January-March 1957	Dec. 7, 1956	Whiting
April-June 1957	Mar. 7, 1957	Hood
July-September 1957	June 7, 1957	Whiting
Oct.-December 1957	Sept. 6, 1957	Hood
[fol. 22]		
Jan.-March 1958	Dec. 6, 1957	Whiting
Apr.-September 1958	Mar. 7, 1958	Hood
Oct. 1958-Mar. 1959	Sep. 7, 1958	Whiting
Apr.-September 1959	Mar. 6, 1959	Hood

30. The following table reflects consecutive periods of particular bid contracts to supply milk to the Boston Naval Shipyard, Navy Department, the dates of the pertinent bid openings and the names of the successful bidders on such contracts during the period of time covered by this Indictment. By the terms of the said conspiracy the periodic contracts for this installation were to be divided into two sections and rotated among defendant Hood, Whiting, and defendant United Farmers, with two of the three sharing the contract each period; and, pursuant to said conspiracy these contracts were allocated to Hood, Whiting, and United Farmers by the defendants and co-conspirators:

<u>Contract Period</u>	<u>Date of Opening</u>	<u>Successful Bidders</u>
Jan-March 1957	Dec. 12, 1956	Hood and United Farmers
Apr.-June 1957	Mar. 11, 1957	Whiting and United Farmers
July-Sept. 1957	June 10, 1957	Hood and Whiting
Oct.-Dec. 1957	Sept. 11, 1957	Hood and United Farmers
Jan.-March 1958	Dec. 16, 1957	Whiting and United Farmers
Apr.-June 1958	Mar. 11, 1958	Hood and Whiting

31. Pursuant to said conspiracy defendants and co-conspirators also submitted non-competitive and collusive bids to various other federal instrumentalities in the Commonwealth of Massachusetts and the states of Maine and New Hampshire, including Hanscom Air Force Base, Bedford, Massachusetts; Otis Air Force Base, Falmouth, Massachusetts; Pease Air Force Base, Portsmouth, New

Hampshire; United States Public Health Service Hospital, Boston, Massachusetts; and the Nike Site at Ft. Banks, Massachusetts.

32. Pursuant to said conspiracy, and as a result of the acts done in furtherance thereof, the corporate defendants [fol. 23] Hood and United Farmers and co-conspirator Whiting have been awarded contracts for the sale of milk to federal installations in the Commonwealth of Massachusetts and the states of Maine and New Hampshire, and have received payments thereunder, on the basis of bids which they submitted and which they falsely and fraudulently represented to be bona fide, independent, competitive, and not the product of any collusion or agreement between the bidders, and the prices of which bids they further falsely and fraudulently represented to be normal, reasonable and competitive; whereas, in fact known to defendants but unknown to the United States of America, the said bids submitted were sham and collusive and not the result of open competition, and the said prices were unreasonable, arbitrary, and non-competitive.

33. With respect to each such contract awarded for the sale of milk during the aforesaid period of the conspiracy, Whiting, or the corporate defendant to which such contract was awarded presented and caused to be presented to the United States for payment or approval by it numerous claims, knowing such claims to be false and fraudulent in that each such claim was based on a contract which had been falsely and fraudulently procured by reason of the aforesaid bidding practices.

XIII. *Effects*

34. As a result of the presentment to it of the aforesaid false and fraudulent claims, and without knowledge thereof, the United States has paid the false and fraudulent claims to the corporate defendants and Whiting.

35. As a result of the illegal conspiracy and the defendants' acts in furtherance thereof, the United States has been denied the right to receive competitive bids in the purchase of milk and has been compelled to pay substantially higher prices for milk than would have been the case but for said illegal conspiracy.

[fol. 24] XIV. *Jurisdiction and Venue*

36. The offense alleged in Count Two of this Indictment was carried out in part within the District of Massachusetts within five years preceding the return of this Indictment.

Dated:

A TRUE BILL:

/s/ Robert L. Feeney
Foreman

/s/ Lee Loevinger
Assistant Attorney General

/s/ Harry G. Sklarsky

/s/ John J. Galgay

/s/ John D. Swartz

Attorneys, Department of Justice

/s/ William J. Elkins

/s/ Charles Donelan

/s/ Stephen M. Ross

Attorneys, Department of
Justice

[fol. 25]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

H. P. HOOD & SONS, INC., UNITED FARMERS OF NEW
ENGLAND, INC., NATIONAL DAIRY PRODUCTS CORPORATION,
HARVEY P. HOOD, WILLIAM C. WELDEN, STAN-
LEY W. BEAL, ALBERT C. FISHER, and LEO G. MAHER,
DEFENDANTS

MOTION OF THE DEFENDANT WILLIAM C. WELDEN TO
DISMISS THE INDICTMENT filed June 29, 1962 in
Criminal No. 62-147-C

The defendant, William C. Welden, moves that the court dismiss the indictment as to him and as grounds, therefor sets forth the following.

1. The portion of the general conspiracy statute (18 U.S.C. 371) under which the defendant is charged in Count Two of the indictment, namely, "or to defraud the United States, or any agency thereof, in any manner or for any purpose", is unconstitutional in that it provides no ascertainable standard of guilt or notice as to what is forbidden, and therefore is void for vagueness all in violation of the 5th and 6th Amendments of the United States Constitution.

[fol. 26] 2. Count Two of the indictment fails to charge the defendant with an offense under 18 U.S.C. 371 in that:

- (a) It alleges a conspiracy to allocate and submit collusive bids to designated federal agencies or departments, which conspiracy, if an offense at all, is an offense under the federal anti-trust laws which themselves require a conspiracy and concert of action.

- (b) It attempts to charge conspiracy offenses covered specifically by Section 1 of the Sherman Act (15 U.S.C. 1) and Section 14 of the Clayton Act (15 U.S.C. 24), all to the exclusion of 18 U.S.C. 371.
- (c) It attempts to charge a conspiracy in part of the same nature as that charged in Count One, especially Paragraph 15 and subparagraphs 16(b), 16(c), 18(b) and 18(c), and as a result thereof the conspiracy charged in Count Two has been fragmented from the conspiracy charged in Count One, to the prejudice of the defendant.
- (d) It is vague and uncertain as to the defendant and fails to allege facts sufficient to charge him with a conspiracy to defraud the United States.

3. Count Two in addition to alleging an offense under 18 U.S.C. 371 also charges an offense under 18 U.S.C. 287 and therefore is duplicitous.

[fol. 27] 4. The Grand Jury, that returned the indictment against the defendant was unlawfully arrayed and therefore not legally qualified to return a true bill. Citizens of the United States residing in the District of Massachusetts and otherwise qualified for jury service whose names were not on the voting lists of their respective communities were unlawfully and systematically excluded as qualified persons for jury service, and all citizens of the United States residing in six of fourteen counties in said District were unlawfully excluded as qualified persons for jury service, all in violation of Article III and Amendments 6 and 7 of the United States Constitution and 28 U.S.C. 1861 *et seq.*

5. The indictment against the defendant was irregularly and unlawfully procured. The first-appointed Deputy Foreman of the Grand Jury that returned the indictment against the defendant, and who was discharged by the court during the course of the proceedings of said Grand Jury, was an improper person present during the presentation of evidence and the examination of witnesses before said Grand Jury all to the prejudice of the defendant, and each of his acts and functions which he performed under the color of his office was and is a nullity.

6. The defendant is being prosecuted for and on account of transactions, matters, and things concerning which he has given testimony and produced documentary and other evidence before the Federal Trade Commission, in behalf of the government, in the proceeding entitled "In the Matter of H. P. Wood & Sons, Inc., Docket No. 7709," and therefore such prosecution of him by this indictment is prohibited under the provisions of 15 U.S.C. 32 and 15 U.S.C. 49.

7. The defendant is being prosecuted for and on account of transactions, matters, and things concerning which he has given testimony and produced documentary and other evidence before a duly authorized Special Sub-[fol. 28] committee on Small Business Problems in the Dairy Industry of the Select Committee on Small Business (House of Representatives, Eighty-sixth Congress, Second Session, pursuant to H. Res. 51. A Resolution Creating A Select Committee To Conduct A Study And Investigation Of The Problems Of Small Business.) and therefore such prosecution of him by this indictment is prohibited under the provisions of 15 U.S.C. 32.

The defendant hereby offers to prove the foregoing allegations of fact as set forth in Paragraphs 4, 5, 6, and 7, and requests a hearing for this purpose.

By his Attorney

/s/ George H. Lewald
50 Federal Street
Boston, Massachusetts

[fol. 29]

CERTIFICATE OF SERVICE (omitted in printing)

[fol. 30]

31

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DEPARTMENT OF JUSTICE
ANTITRUST DIVISION
United States Court House
Foley Square
NEW YORK 7, N. Y.

In Reply
Refer to

Initials and Number

WJE:mon
60-139-137

November 19, 1962

Honorable Andrew A. Caffrey
United States District Judge
District of Massachusetts
1505 United States Courthouse
Boston 9, Massachusetts

Re: *United States v. H. P. Hood & Sons, Inc., et al*

Dear Judge Caffrey:

In Mr. Hanify's letter of November 9, 1962 to the Court reference is made to the defendants' requests for hearings to receive evidence upon several motions presently before the Court. The motions with respect to which these requests are made are the motion to dismiss on the ground that the grand jury was unlawfully arrayed, the motion to dismiss on the ground that the Indictment was irregularly and unlawfully procured and the motion to dismiss as to defendant William C. Welden on the ground that he is entitled to immunity from prosecution under Title 15 U.S.C. Sec. 32, Title 15 U.S.C. Sec. 49.

It is the Department's position that it is unnecessary to hold hearings to receive evidence upon these motions. The

motion to dismiss on the ground that the Indictment was irregularly and unlawfully procured is based solely upon the discharge by the Court of the first appointed deputy foreman of the grand jury during the course of the proceedings of the grand jury. The discharge of this deputy foreman was the subject of a hearing held before Judge Ford on March 14, 1962. This hearing fully explored the facts that resulted in the discharge and would appear to leave no facts in issue. The incorporation of the transcript of this hearing into the record of the instant case would appear to obviate the necessity of holding an evidentiary hearing on this motion.

Defendant William C. Welden's motion to dismiss the Indictment on the ground that he is entitled to immunity [fol. 31] from prosecution is based upon testimony given before the Federal Trade Commission and the Special Subcommittee on Small Business Problems in the dairy industry of the Select Committee on Small Business. There appears to be no issue of fact either as to the fact that defendant Welden so testified or as to his testimony. The issue is whether the legal effect of the testimony is to confer immunity upon this defendant. The incorporation of the transcript of the hearings at which defendant Welden has given testimony would obviate the necessity of an evidentiary hearing on this motion.

Lastly, the defendants' motion to dismiss the Indictment on the ground that the grand jury was unlawfully arrayed is based on the fact that voting lists of the respective communities comprising the district are used as a source of jurors and the fact that jurors are drawn from only six of the fourteen counties that comprise the district. The Government is willing to stipulate to these facts.

It is therefore submitted that the defendants are not entitled to a hearing to receive evidence upon any of the said motions, inasmuch as there are no issues of fact raised by these motions that necessitate a hearing. We submit that the necessity of hearings be covered by de-

fense counsel in briefs and in arguments, and in accordance with the schedule already set by the Court.

Respectfully yours,

LEE LOEVINGER
Assistant Attorney General

By: /s/ John J. Galgay—W. J. Elkins
JOHN J. GALGAY
Chief, New York Office

cc: Edward B. Hanify, Esq., 50 Federal St., Boston
George H. Lewald, Esq., 50 Federal St., Boston
Claude Cross, Esq., 73 Tremont St., Boston
Sumner Babcock, Esq., 1 Federal St., Boston
Robert W. Meserve, 75 Federal St., Boston

[fol. 32]

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

H. P. HOOD & SONS, INC., UNITED FARMERS OF NEW
ENGLAND, INC., NATIONAL DAIRY PRODUCTS CORPORATION,
HARVEY P. HOOD, WILLIAM C. WELDEN, STAN-
LEY W. BEAL, ALBERT C. FISHER, and LEO G. MAHER,
DEFENDANTS

DISMISSAL OF INDICTMENT—filed December 5, 1962 in
Cr. No. 62-147-C

Now comes WILLIAM J. ELKINS, Attorney, Antitrust
Division, Department of Justice, and pursuant to Rule
48 of the Federal Rules of Criminal Procedure, dismisses
the indictment pending in the above-entitled case which
was returned April 24, 1962 for the reason that a super-
seding indictment, Criminal No. 62-286-C, was returned
on September 6, 1962 against the same defendants.

/s/ William J. Elkins
Attorney
Antitrust Division
Department of Justice

Leave to file granted: 12-5-62

/s/ Andrew A. Caffrey
United States District Judge

[fol. 33]

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Cr. No. 62-286-C

UNITED STATES OF AMERICA

v.

H. P. HOOD & SONS, INC., et al

STIPULATION—filed September 25, 1962

It is hereby stipulated by and between the plaintiff and the defendant, William C. Welden, that all motions filed by the said defendant directed to the indictment in United States v. H. P. Hood & Sons, Inc., et al, Cr. No. 62-147-C (D: Mass.) shall be deemed directed to the indictment in United States v. H. P. Hood & Sons, et al, Cr. No. 62-286-C (D: Mass.)

/s/ William J. Elkins
Attorney for United States

/s/ George H. Lewald
Attorney for Defendant William C. Welden
50 Federal St.
Boston, Mass.

[fol. 34]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Copy

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF
THE CONGRESS OF THE UNITED STATES OF AMERICA

To Brooks Robertson

You are hereby commanded to summon Mr. William Welden, H. P. Hood and Sons, 500 Rutherford Ave., Charlestown, Mass. to be and appear before the Special Subcommittee of the Select Committee on Small Business of the House of Representatives of the United States, of which the Hon. Tom Steed is chairman, and to present to him the documents, records, and papers setting forth the text, terms, and conditions of agreements between the H.P. Hood and Sons and The Great Atlantic and Pacific Tea Company, or officials of these firms relating to the distribution and sale of milk, other dairy products and related items, during the period 1937 to the date of this subpoena, in the Gardiner Auditorium, State House, Boston, Massachusetts on February 18, 1960; at the hour of 2:30 p.m. then and there to testify touching matters of inquiry committed to said Committee; and he is not to depart without leave of said Committee.

Herein fail not, and make return of this summons.

Witness my hand and seal of the House of Representatives of the United States, at the city of Washington, this 3rd day of February, 1960

/s/ Tom Steed
Chairman
Special Subcommittee

Attest:

/s/ Ralph R. Roberts
Clerk.

CERTIFIED A TRUE COPY

/s/ Brooks Robertson
Brooks Robertson, Staff Director, Select Committee on Small Business, U. S. House of Representatives

[fol. 35]

SMALL BUSINESS PROBLEMS IN THE DAIRY INDUSTRY

HEARINGS

Before the

SPECIAL SUBCOMMITTEE OF THE
SELECT COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH CONGRESS

Second Session

Pursuant to.

H. RES. 51

A Resolution Creating a Select Committee to
Conduct a Study and Investigation of
the Problems of Small Business

PART IV

Boston, Mass.

February 17, 18, and 19, 1960

[omitted in printing]

[fol. 36]

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. 62-286-C

UNITED STATES OF AMERICA

v.

H. P. HOOD & SONS, INC., UNITED FARMERS OF NEW
ENGLAND, INC., NATIONAL DAIRY PRODUCTS CORPORATION,
HARVEY P. HOOD, WILLIAM C. WELDEN, STAN-
LEY W. BEAL, ALBERT C. FISHER, LEO G. MAHER

MEMORANDUM and ORDER—March 27, 1963

CAFFREY, D.J.

The five individual and three corporate defendants filed a series of substantially identical motions. In addition a claim of immunity to prosecution was asserted by the defendant William C. Welden. The motions will be dealt with *seriatim*.

I. *The Motions for Bills of Particulars.* The indictment filed herein, which was drawn in clear and simple language, sufficiently apprises each defendant of the nature of the offenses charged to enable him or it to prepare a defense and to protect each defendant from any risk of double jeopardy. *Russell v. United States*, 369 U.S. 749, 763-4 (1962). All motions for bills of particulars [fol. 37] are denied.

II. *The Motions to Strike Certain Allegations of the Indictment.* All motions to strike are denied. *United States v. Russo*, 155 F.Supp. 251, 254 (D. Mass. 1957).

III. *The Motions to Dismiss.* The motions to dismiss filed on behalf of the corporate defendants and the defendants Hood, Beal, Fisher and Maher are denied. The motion to dismiss the indictment as to defendant Welden is allowed.

I find that Mr. Welden was subpoenaed to appear before a Special Subcommittee of the Select Committee on Small Business of the House of Representatives, 86th Congress, 2d Session, pursuant to H.Res. 51, and to bring with him certain documents, records and papers of H. P. Hood Company for the period 1937 to the date of the subpoena and I find that the subpoena required Mr. Welden "then and there to testify touching matters of inquiry committed to said Committee." I further find that pursuant to the subpoena Welden produced documents of Hood and was then interrogated at considerable length as to the nature of his activities on behalf of Hood and as to the price policy of the company. I find that Welden testified on February 18 and 19, 1960, about economic practices pursued by the Hood Company, about the competitive situation in the Greater Boston milk market, about price changes and policies of Hood, and about meetings between himself and representatives of competitors of Hood, to such an extent as to bring him within the immunity provision of 15 U.S.C.A. 32. I find absolutely no evidence in the record presently before this Court of any waiver of his immunities by Mr. Welden. It must be remembered that waiver is to be found only upon clear proof thereof. See *Himmelfarb v. United States*, 175 F.2d 924, 931 (9 Cir. 1949). It is immaterial that Welden did not affirmatively claim immunity. *United States v. Monia*, 317 U.S. 424, 430 (1943).

I rule that Mr. Welden's testimony was pertinent "to the very heart and substance of the matters charged in the indictment." *United States v. Armour*, 64 F.Supp. 855, 857 (E.D. Pa.1946). I reject the Government's contention that 18 U.S.C.A. 3486 is the exclusive source of immunity to persons testifying before a Congressional committee. A reading of Section 3486 makes it clear that Congress in enacting that section was concerned only with the immunity of witnesses testifying before Congressional committees in the area of national security and defense. This section does not purport to regulate the immunity question in any Congressional investigation outside the area of national defense and security.

The word "proceeding" in 15 U.S.C.A. 32 should not be given the narrow technical scope argued for by the Government where to do so would fly in the face of traditional American notions of fair play (cf. *McDonald v. Mabee*, 243 U.S. 90 (1917)) and subject a defendant to stand trial for conduct about which he has been compelled to testify by the subpoena power of a Congressional Subcommittee. *United States v. Armour*, 142 Fed. 808 (N.D. Ill. 1906); cf. *Bowers v. New York & Albany Lighterage Co.*, 273 U.S. 346, 352 (1927).

Finally, the Government's contention that the hearings were not conducted under the anti-trust laws as required by 15 U.S.C.A. 32 before immunity will attach is disposed of by the words of Chairman Tom Steed in opening the hearings: "The purpose of these hearings is to receive testimony about alleged attempts of large distributors of dairy products in the New England area to destroy small competitors and to gain control over prices and markets." Hearings before the Special Subcommittee of the Select Committee on Small Business of the House of Representatives, 86th Cong., 2nd Sess., Part IV, at 363 (1960). The hearings were clearly within the ambit of the immunity statute.

The indictment is dismissed as to defendant William C. Welden.

/s/ Andrew A. Caffrey.
U. S. D. J.

[fol. 41]

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. 62-286-C

UNITED STATES OF AMERICA

v.

H. P. HOOD & SONS, INC., UNITED FARMERS OF NEW
ENGLAND, INC., NATIONAL DAIRY PRODUCTS CORPORATION,
HARVEY P. HOOD, WILLIAM C. WELDEN, STANLEY W. BEAL,
ALBERT C. FISHER, LEO G. MAHER

JUDGMENT—March 27, 1963

In accordance with Memorandum and Order of the
Court handed down this date, it is

ORDERED:

Judgment of acquittal for defendant
William C. Welden.

By the Court,

/s/ William J. Lyons
Deputy Clerk

/s/ Andrew A. Caffrey
U. S. D. J.

[fol. 42]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTSCourt Room No. 2
U. S. Post Office and Court House
Boston, Massachusetts

HEARING OF APRIL 16, 1963

MR. GALGAY. We asked for this conference for two reasons. The first is the order of judgment that was entered in this case, it is not in conformity with your memorandum and order. The last line of your memorandum and order states that the indictment as to Weldon is dismissed, whereas your judgment orders it is an acquittal. I think under the rules if you believe it to be an error you can correct it on your own motion.

THE COURT. What do you say?

MR. LEWALD. I do not know that the phraseology is terribly important. I have no objection if your Honor feels there is any error, on the record.

THE COURT. I am not clear on what you say the error is.

MR. GALGAY. I think the effect of an order of acquittal is different from the order of dismissal on the defendant Weldon. I do not know how it would affect its admissibility. It is a minor point. Mr. Canavan might have some judgment on it. I do think it ought to be corrected.

[fol. 43] MR. CANAVAN. At the end of your memorandum and order you say the indictment is dismissed against Weldon. When judgment was entered there was a judgment of acquittal. I suppose your order is in conformity with—

MR. GALGAY. Rule 12, that is, providing for dismissal.

MR. CANAVAN. As I understand it, there was no hearing on the merits here.

THE COURT. Whereabouts in Rule 12 do you see anything about the form of the order?

MR. CANAVAN. Nothing about the form of the order. It was a proceeding in conformity—

THE COURT. I don't think there is any question about that.

MR. CANAVAN. Your order was in conformity with Rule 12. You ordered dismissal. But when the judgment was entered it was a judgment of acquittal.

THE COURT. What kind of judgment would be entered?

MR. CANAVAN. Dismissing the indictment as to the defendant Weldon.

MR. GALGAY. Do you have an acquittal before you for a hearing on the merits?

THE COURT. I will take it under advisement. I am [fol. 44] not going to decide it without looking at the law.

MR. GALGAY. The next point is the opinion your Honor filed in connection with the motions of the defendant Weldon. I bring this up because the question of the appeal from that motion has been given considerable thought in Washington.

If you will recall the defendant's motion, defendant Weldon's motion dealt with the immunity problem. It was in two parts, Paragraph 6 and Paragraph 7. Paragraph 6 dealt with immunity under Title 15, Section 49, which applies to the Federal Trade Commission. Section 7 dealt with the congressional hearing.

As your Honor will recall, his opinion was based on immunity having been obtained on Weldon's testimony before the congressional committee. Having in mind the Department's relationship with the Supreme Court and the number of appeals we do file, we are quite concerned about the problem of appealing from your Honor's opinion.

Based on Weldon's immunity, obtained through the congressional committee, if we were successful before the Supreme Court and they returned the case to this Court it would be only to have the defendant Weldon then raise the question of immunity under Title 15, Section 49, dealing with his testimony before the Federal Trade Commission.

[fol. 45] Your Honor also is silent on any immunity obtained before the Federal Trade Commission.

Rather than put the Department in the position of going to the Supreme Court and if it is successful, coming down and then going up again, we suggest to your Honor perhaps a supplemental opinion might be written expressing your attitude on whether or not Weldon obtained immunity by his appearance before the Federal Trade Commission.

THE COURT. That I decline to do.

MR. GALGAY. I do not know what I can say that might extend the argument. I have been authorized to state that if the Court did see fit to write a supplemental opinion and even if that opinion were negative so far as the government was concerned, in that posture other questions as to appealability would be raised, where it would be unlikely that the government would appeal.

MR. ELKINS. If we were to petition the Court, perhaps more formally, we would predicate that petition solely on the grounds of efficient administration of justice in order to avoid going back to the Supreme Court twice, let us say, rather than once, or as Mr. Galgay suggests, if at all.

THE COURT. I once heard Judge Wyzanski make [fol. 46] the statement he did not give "iffy" or advisory opinions. I reached a decision on one claim of the defendants which disposes of the case. I don't care to speculate on anything that is not necessary to decide and determine.

If you want to file something formally, you are free to file anything you want. I am not inclined to get into an academic exercise which is not necessary to determine what is before me.

[Clerk's Certificate to foregoing
paper omitted in printing.]

[fol. 47]

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. 62-286-C

UNITED STATES OF AMERICA

v.

H. P. HOOD & SONS, INC., UNITED FARMERS OF NEW
ENGLAND, INC., NATIONAL DAIRY PRODUCTS CORPORATION,
HARVEY P. HOOD, WILLIAM C. WELDEN, STAN-
LEY W. BEAL, ALBERT C. FISHER, LEO G. MAHER.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES—filed April 26, 1963

Notice is hereby given that the United States of America appeals to the Supreme Court of the United States from the judgment of acquittal for defendant William C. Welden dated and entered herein March 27, 1963. This appeal is taken pursuant to 18 U.S.C. 3731.

Defendant Welden was charged with the offenses of conspiring (a) to restrain trade and commerce, in violation of Section 1 of the Sherman Act (15 U.S.C. 1) and, (b) to defraud the United States, in violation of 18 U.S.C. 371. Defendant Welden moved to dismiss the indictment on the ground that he was immune from prosecution by virtue of testimony he gave in other proceedings. Upon allowance of that motion in bar, judgment of acquittal was entered, and the defendant is not in custody.

II.

The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Indictment, filed September 6, 1962.
2. Dismissal filed December 5, 1962, of the indictment returned April 24, 1962, in Cr. No. 62-147-C.

[fol. 48] 3. Motion filed June 29, 1962 of defendant William C. Welden to dismiss the indictment (Cr. No. 62-147-C).

4. Stipulation, Filed September 25, 1962, between plaintiff and defendant William C. Welden.

5. Exhibit E to Joint Memo of Defendants in Support of Motion to Dismiss, filed November 26, 1962 (Exhibit E consists of Part IV of the Hearings at Boston on February 17-19, 1960, before the Special Subcommittee on Small Business in the Dairy Industry of the Select Committee on Small Business, House of Representatives, 86th Cong., 2d Sess).

6. Memorandum and Order, filed March 27, 1963.

7. Judgment of Acquittal for defendant William C. Welden, filed March 27, 1963.

8. This notice of appeal.

III

The question presented on this appeal is whether a person who testifies before a Congressional subcommittee is giving evidence in a "proceeding, suit, or prosecution under [the Sherman Act]" within the meaning of 15 U.S.C. 32, and thereby obtains immunity from prosecution with respect to any matter concerning which he testified.

/s/ John J. Galgay
Attorney, Department of Justice,
Attorney for the United States

Dated: April 24, 1963

[fol. 49]

CERTIFICATE OF SERVICE (omitted in printing)

[fol. 50]

[File Endorsement Omitted]

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. 62-286-C

UNITED STATES OF AMERICA

v.

H. P. HOOD & SONS, INC., UNITED FARMERS OF NEW
ENGLAND, INC., NATIONAL DAIRY PRODUCTS CORPORATION,
HARVEY P. HOOD, WILLIAM C. WELDEN, STAN-
LEY W. BEAL, ALBERT C. FISHER, LEO G. MAHER.

APPELLEE'S CROSS-DESIGNATION OF RECORD TO BE
CERTIFIED ON APPEAL—filed May 15, 1963

The appellee, William C. Welden, herein files and serves his designation of additional portions of the record to be certified by the Clerk to the Supreme Court of the United States.

The Clerk will please include in the transcript of the record in the captioned case for certification to the Supreme Court the following additional portions of the record:

1. Letter of Lee Loevinger, Assistant Attorney General, by John J. Galgay to the Honorable Andrew A. Caffrey, United States District Judge, District of Massachusetts, dated November 19, 1962.
2. Command of Special Subcommittee of the Select Committee on Small Business House of Representatives Eighty-Sixth Congress Second Session pursuant to H. Res. 51 to summons William C. Welden to [fol. 51] testify touching matters of inquiry committee to said Committee, etc. on February 18, 1960.

3. Transcript of Hearing on April 16, 1963, before Andrew A. Caffrey, United States District Judge for the District of Massachusetts.
4. This Cross-Designation.

WILLIAM C. WELDEN
By his Attorney,

/s/ George H. Lewald
GEORGE H. LEWALD
ROPES & GRAY
50 Federal Street
Boston, Massachusetts

PROOF OF SERVICE (omitted in printing)

[fol. 53] * * *

[fol. 54]

[Clerk's Certificate to foregoing
transcript omitted in printing.]

[fol. 55]

SUPREME COURT OF THE UNITED STATES

No. 235, October Term, 1963

UNITED STATES, APPELLANT

vs.

WILLIAM C. WELDEN

APPEAL from the United States District Court for the District of Massachusetts.

ORDER NOTING PROBABLE JURISDICTION—October 14, 1963

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.